

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sara Griffin	Team: Squad #4	CCRB Case #: 201802785	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 03/31/2018 4:41 PM	Location of Incident: § 87(2)(b)	Precinct: 73	18 Mo. SOL 9/30/2019	EO SOL 9/30/2019	
Date/Time CV Reported Sun, 04/01/2018 11:45 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 04/10/2018 11:14 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Louis Aponte	07454	957850	073 PCT
2. POM Vincent Dandraia	27309	957510	073 PCT
3. Officers			073 PCT
4. POM Henry Rivera	03959	940639	073 PCT
5. POM Jeffrey Goris	17322	954887	073 PCT
6. POF Delilah Beniquez	11690	956428	073 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Sean Slowski	17713	959253	073 PCT
2. POM Richard Catapano	05751	961675	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jeffrey Goris	Force: Police Officer Jeffrey Goris used a Taser against § 87(2)(b)	§ 87(2)(b)
B.POF Delilah Beniquez	Force: Police Officer Delilah Beniquez used a Taser against § 87(2)(b)	§ 87(2)(b)
C.POM Vincent Dandraia	Force: Police Officer Vincent Dandraia used physical force against § 87(2)(b)	§ 87(2)(b)
D. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(b)
E.POM Henry Rivera	Force: Police Officer Henry Rivera used physical force against § 87(2)(b)	§ 87(2)(b)
F.POM Henry Rivera	Abuse: Police Officer Henry Rivera interfered with § 87(2)(b)'s use of a recording device.	§ 87(2)(b)
G.POM Henry Rivera	Abuse: Police Officer Henry Rivera arrested § 87(2)(b)	§ 87(2)(b)
H.POM Louis Aponte	Force: Police Officer Louis Aponte used physical force against § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
I.POM Louis Aponte	Force: Police Officer Louis Aponte used physical force against § 87(2)(b)	
J.POM Louis Aponte	Abuse: Police Officer Louis Aponte arrested § 87(2)(b)	

## Case Summary

On March 31, 2018, § 87(2)(b) filed the following complaint with 311 via the online website. On April 1, 2018, IAB Log #2018-12928 was generated regarding § 87(2)(b)'s complaint. On April 10, 2018, IAB Log #2018-12928 was received at the CCRB. § 87(2)(b) did not witness the incident and filed the complaint on behalf of her son, § 87(2)(b).

On March 31, 2018, at approximately 4:41 PM, Police Officer Jeffrey Goris, Police Officer Delilah Beniquez, Police Officer Vincent Dandraia, Police Officer Henry Rivera, Police Officer Louis Aponte and other unidentified officers from the 73<sup>rd</sup> Precinct responded to a report of an assault at § 87(2)(b) in Brooklyn. The alleged suspect of the assault, § 87(2)(b), fled on foot. PO Goris allegedly used a Taser against § 87(2)(b) (Allegation A- Force, § 87(2)(g)). PO Beniquez allegedly used a Taser against § 87(2)(b) (Allegation B- Force, § 87(2)(g)). PO Dandraia allegedly used physical force against § 87(2)(b) (Allegation C- Force, § 87(2)(g)). Unidentified officers allegedly used physical force against § 87(2)(b) (Allegation D- Force, § 87(2)(g)).

PO Rivera used physical force against § 87(2)(b) (Allegation E- Force, § 87(2)(g)); interfered with § 87(2)(b)'s use of a recording device (Allegation F- Abuse of Authority, § 87(2)(g)); and arrested § 87(2)(b) (Allegation G- Abuse of Authority, § 87(2)(g)).

PO Aponte used physical force against § 87(2)(b) (Allegation H- Force, § 87(2)(g)) and (Allegation I- Force, § 87(2)(g)), and arrested § 87(2)(b) (Allegation J- Abuse of Authority, § 87(2)(g)).

There is surveillance camera and cell phone video footage capturing the incident.

## Findings and Recommendations

**Allegation A- Force: Police Officer Jeffrey Goris used a Taser against § 87(2)(b)**

**Allegation B- Force: Police Officer Delilah Beniquez used a Taser against § 87(2)(b)**

**Allegation C- Force: Police Officer Vincent Dandraia used physical force against § 87(2)(b)**

**Allegation D- Force: Officers used physical force against § 87(2)(b)**

§ 87(2)(b) was uncooperative with the investigation.

§ 87(2)(b) (Board Review 1) and § 87(2)(b) (Board Review 2) testified to seeing two Tasers being used against § 87(2)(b) and observing unidentified officers placing their knees on § 87(2)(b)'s back.

Cellular phone video taken by bystander § 87(2)(b) was provided to the investigation (Board Review 3). The video shows § 87(2)(b) laying on the ground and surrounded by kneeling officers. The video also shows PO Dandraia punching § 87(2)(b). However, it is unclear where on § 87(2)(b)'s body PO Dandraia punches.

Attached below is a Snag It (Board Review 4) of PO Dandraia punching § 87(2)(b)



2018-10-18\_9-26-45.mp4

§ 87(2)(g)

**Allegation E- Force: Police Officer Henry Rivera used physical force against § 87(2)(b)**

It is undisputed that while officers were attempting to restrain § 87(2)(b) a large number of civilians congregated nearby, including § 87(2)(b). It is undisputed that PO Rivera arrived on scene after hearing a request for additional units. Upon arrival, PO Rivera attempted to do crowd control. It is undisputed that PO Rivera and § 87(2)(b) came into contact, and PO Rivera pushed § 87(2)(b). The circumstances regarding the push are in dispute.

§ 87(2)(b) testified (Board Review 2) that he attempted to film while the officers handcuffed § 87(2)(b). Officers had their arms extended to create a physical boundary, and § 87(2)(b) stuck his arm past the boundary. PO Rivera approached § 87(2)(b) and pushed him with two hands on his chest. PO Rivera did not say anything before pushing § 87(2)(b). PO Rivera's push caused § 87(2)(b) to travel backwards approximately six feet.

Surveillance footage from § 87(2)(b) was obtained and captured the interaction between § 87(2)(b) and PO Rivera. Attached below is a Snag It of the surveillance footage (Board Review 6). § 87(2)(b) is the black male wearing black pants and a grey sweatshirt and is holding a cell phone in the middle of the screen. PO Rivera is the Hispanic male wearing a black and grey striped sweater that is observed entering from the bottom right corner. PO Rivera is observed arriving on scene and approaching § 87(2)(b). At 0:10, PO Rivera appears to swat away the hand § 87(2)(b) is holding his cell phone with. PO Rivera directs his attention towards another bystander, before suddenly turning back to § 87(2)(b) and pushing him. § 87(2)(b) is stationary between PO Rivera swatting away his hand and the push. At the time PO Rivera pushes § 87(2)(b) is not observed leaning over or encroaching on the officers attempting to handcuff § 87(2)(b). § 87(2)(b) is observed traveling backwards several feet as a result of the push.



2018-08-24\_13-24-34.mp4

PO Rivera testified (Board Review 5) that § 87(2)(b) was lingering and “hovering right over” the officers who were attempting to handcuff § 87(2)(b). § 87(2)(b) was approximately five to ten feet away from the officers handcuffing § 87(2)(b). § 87(2)(b) was recording on his cell phone and was leaning inwards. § 87(2)(b) got within an arm’s length of PO Rivera. PO Rivera told § 87(2)(b) “Get away, get back.” § 87(2)(b) did not comply with the instruction. PO Rivera pushed § 87(2)(b) on the shoulder area, which caused § 87(2)(b) to travel back several feet. PO Rivera reviewed the video footage during his interview and denied that he approached § 87(2)(b) prior to pushing him and insisted that § 87(2)(b) approached him.

According to Patrol Guide Procedure 221-01 (Board Review 7), any application or use of force must be reasonable under the circumstances.

§ 87(2)(g)

**Allegation F- Abuse of Authority: Police Officer Henry Rivera interfered with § 87(2)(b)’s use of a recording device.**

**Allegation G- Abuse of Authority: Police Officer Henry Rivera arrested § 87(2)(b)**

It is undisputed that after pushing § 87(2)(b) PO Rivera returned his attention to the officers attempting to handcuff § 87(2)(b). Once § 87(2)(b) was placed into handcuffs, PO Rivera made his way back to his vehicle. It is undisputed that § 87(2)(b) walked towards PO Rivera, and attempted to record him. Upon taking notice of § 87(2)(b) PO Rivera approached § 87(2)(b) and placed him under arrest for Obstruction of Governmental Administration (OGA).

§ 87(2)(b) testified (Board Review 2) that PO Rivera was approximately two to three feet away when he approached and attempted to record. § 87(2)(b) was standing on the sidewalk next to a parked vehicle. § 87(2)(b) did not say anything to PO Rivera while he attempted to film him. PO Rivera approached and, with the assistance of several unidentified officers, placed § 87(2)(b) in handcuffs. § 87(2)(b) cell phone experienced technical difficulties, and was not successful in recording the interaction.

PO Rivera testified (Board Review 5) that as he walked back to his vehicle, § 87(2)(b) began to “chase after” and harass him by following him, recording him, and yelling obscenities. PO Rivera recalled § 87(2)(b) yelling, “Go fuck yourself,” “You are a pussy,” and “You are a bitch.” PO Rivera believed § 87(2)(b) was inside a police vehicle at the time. § 87(2)(b) was approximately five to 10 feet away when PO Rivera decided to place him under arrest. § 87(2)(b) was guilty of OGA for following and recording PO Rivera. § 87(2)(b) was not observed acting in a manner that made him guilty of OGA prior to following and recording him.

Attached below is a Snag It of § 87(2)(b) surveillance footage (Board Review 6). At 1:00, § 87(2)(b) is observed walking in the direction of PO Rivera while holding out his cell phone. There is a fair distance between PO Rivera and § 87(2)(b). At 1:04, PO Rivera turns around and takes notice of § 87(2)(b) recording him. PO Rivera approaches § 87(2)(b) who is standing alone near a parked vehicle. PO Rivera is then seen placing § 87(2)(b) in handcuffs with the assistance of several uniformed officers.



2018-08-24\_13-24-34.mp4

According to Patrol Guide Procedure 203-29 (Board Review 8), individuals have the right to lawfully record police activity including, but not limited to, detentions, searches, arrests, or uses of force. Police officers may not arrest an observer for Obstruction of Governmental Administration (OGA) if the observer is taking photographs, videotaping, or making a digital recording.

New York Penal Law 195.05 (Board Review 9) states that a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidating, physical force or interference, or by means of any independent unlawful act.

§ 87(2)(g)  
[Redacted text block containing multiple lines of blacked-out content]

**Allegation H- Force: Police Officer Louis Aponte used physical force against § 87(2)(b)**

It is undisputed that § 87(2)(b) had congregated on the sidewalk to observe the police activity and that PO Aponte arrived on scene after hearing a request for additional units. It is undisputed that PO Aponte and § 87(2)(b) came into contact, the exact circumstances remain in dispute. It is in dispute whether § 87(2)(b) pushed PO Aponte. It is undisputed that PO Aponte struck § 87(2)(b) with a closed fist, contacting § 87(2)(b)'s face. § 87(2)(b) fell to the ground and sustained a laceration to the back of his head.

§ 87(2)(b) testified (Board Review 1) that he was watching § 87(2)(b) being arrested, when PO Aponte approached and struck him with a closed fist on the left side of his face. § 87(2)(b) denied making physical contact with PO Aponte before he was struck. § 87(2)(b) denied he said anything to PO Aponte and PO Aponte said anything to him before the hand strike. § 87(2)(b) fell to the ground, with the back of his head contacting the ground. § 87(2)(b)'s head sustained swelling and bleeding.

The narrative in § 87(2)(b)'s Medical Records (Privileged Documents) from April 2, 2018, states that § 87(2)(b) complained of hitting his head on the concrete due to an assault by police three days prior. Dried blood was observed on § 87(2)(b)'s posterior scalp.

Surveillance footage from § 87(2)(b) was obtained and captured the entire interaction between § 87(2)(b) and PO Aponte. Attached below is a Snag It of the surveillance footage (Board Review 16). § 87(2)(b) is the small black male wearing a blue jacket with a white stripe on the sleeves observed in the middle of the screen. At the beginning of the Snag It, § 87(2)(b) is observed conversing with two unidentified uniformed officers on the sidewalk. At 0:06, PO Aponte is observed walking over to where § 87(2)(b) and the officers are conversing. At 0:12, PO Aponte is observed pushing § 87(2)(b) on the left side of his body. § 87(2)(b) turns and approaches PO Aponte. At 0:15, PO Aponte is observed utilizing a hand strike against § 87(2)(b).



2018-08-27\_15-57-24.mp4

PO Aponte testified (Board Review 10) that he was conducting crowd control, when § 87(2)(b) got within six inches of him. PO Aponte instructed § 87(2)(b) to step back from the police activity. § 87(2)(b) pushed PO Aponte on the left hip/utility belt area, but did not make contact with his weapon or utility belt. At the time of the interaction, PO Aponte believed § 87(2)(b) was handcuffed and inside a police vehicle. PO Aponte pushed § 87(2)(b) with two hands and instructed him to, "Get back." PO Aponte could not recall where on § 87(2)(b)'s body he pushed. § 87(2)(b) approached PO Aponte in a "threatening and violent manner" by getting within six to 12 inches of PO Aponte, poking out his chest, and saying, "What? What?" PO Aponte did not remember where § 87(2)(b)'s hands were. PO Aponte struck § 87(2)(b)'s face with a closed fist. PO Aponte struck § 87(2)(b) because he thought § 87(2)(b) was going to strike him, given that he had approached closely. § 87(2)(b) fell to the ground as a result of PO Aponte's strike. § 87(2)(b) had a small laceration on the back of his head, but PO Aponte did not know how § 87(2)(b)





§ 87(2)(b) but he later clarified that he believed he only threw one additional hand strike and did not know where the strike made contact. PO Aponte threw the second hand strike because § 87(2)(b) was actively resisting and was still a threat, as § 87(2)(b) had previously approached closely and pushed PO Aponte. PO Aponte did not know how much time had transpired between § 87(2)(b) falling to the ground and the second hand strike.

PO Catapano and PO Slowski both testified (Board Review 11 and 12) and both denied seeing PO Aponte utilize a second hand strike on § 87(2)(b). Both officers testified that § 87(2)(b) resisted being handcuffed by flailing and pulling his arms away.

The struggle and second hand strike is not clearly captured in the Snag It, as the officers are observed going off screen while handcuffing § 87(2)(b).

According to Patrol Guide Procedure 221-01 (Board Review 7), any application or use of force must be reasonable under the circumstances.

§ 87(2)(g)  
[REDACTED]

**Allegation J- Abuse of Authority: Police Officer Louis Aponte arrested § 87(2)(b)**

It is undisputed that PO Aponte arrested § 87(2)(b) for Obstructing Governmental Administration (OGA) and two counts of disorderly conduct (violent/fighting behavior and creating a hazardous condition.)

§ 87(2)(b) testified (Board Review 1) that he was approximately 60 feet away from the officers arresting § 87(2)(b) and had previously complied with officers' instructions to step back. § 87(2)(b) denied that he physically interfered with the officers handcuffing § 87(2)(b).

PO Aponte testified (Board Review 10) that § 87(2)(b) was guilty of OGA for interfering with the police dispersing the crowd and making a lawful arrest. § 87(2)(b) was guilty of disorderly conduct for getting close to PO Aponte and pushing him. PO Aponte clarified that § 87(2)(b) acted in a "violent and threatening manner" by approaching closely and "gestured threateningly" by poking out his chest.

As observed in the Snag It (Board Review 16), § 87(2)(b) is conversing with officers away from the police activity when PO Aponte approaches and engages § 87(2)(b). Prior to PO Aponte's approach, § 87(2)(b) is not observed acting disorderly or interfering or obstructing the nearby police activity. § 87(2)(b) was believed to have been inside a police vehicle and officers are observed in the process of handcuffing § 87(2)(b). § 87(2)(b) is not observed

attempting to interfere or interfering with their activity, and is not in a relatively close proximity to either arrest.

New York Penal Law 195.05 (Board Review 9) states that a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidating, physical force or interference, or by means of any independent unlawful act.

New York Penal Law 240.20 (01) (Board Review 16) states that a person is guilty of disorderly conduct, when with intent to cause public inconvenience, annoyance or alarm, or recklessly creating risk thereof by engaging in fighting or in violent, tumultuous or threatening behavior and by (07) creating a hazardous or physically offensive condition by any act which serves no legitimate purpose.

§ 87(2)(g)

[REDACTED]

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 18).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 19).

- § 87(2)(b) [REDACTED]  
[REDACTED]
  - [REDACTED]  
[REDACTED]
  - [REDACTED]  
[REDACTED]
  - [REDACTED]  
[REDACTED]
- § 87(2)(b) [REDACTED]  
[REDACTED]
  - [REDACTED]  
[REDACTED]  
[REDACTED]

- PO Beniquez has been a member of service for four years and this is the first CCRB complaint to which she has been a subject (Board Review 22).
- PO Aponte has been a member of service for three years and has been a subject in one CCRB complaint and one allegations, none of which were substantiated. § 87(2)(g) (Board Review 23).
- PO Goris has been a member of service for five years and has been a subject in three CCRB complaints and five allegations, none of which were substantiated. § 87(2)(g) (Board Review 24).
- PO Dandraia has been a member of service for three years and has been a subject in one CCRB complaint and three allegations, none of which were substantiated. § 87(2)(g) (Board Review 25).
- PO Rivera has been a member of service for 12 years and has been a subject in nine CCRB complaints and fifteen allegations, of which one was substantiated:
  - 201602547 involved the substantiated allegation of frisk against PO Rivera. The Board recommended formalized training and the NYPD imposed formalized training.
  - § 87(2)(g) (Board Review 26).

### **Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- As of August 14, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint by § 87(2)(b) and § 87(2)(b)

- As of May 25, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint by § 87(2)(b) and § 87(2)(b)

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date